

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : George P. Teitelbaum
App. No : 10/688,135
Filed : October 17, 2003
For : PERCUTANEOUS VERTEBRAL
FUSION SYSTEM
Examiner : Jerry L. Cumberledge
Art Unit : 3733
Conf # : 2028

APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In the above-captioned patent application, Applicant respectfully submits the following Reply to the Examiner's Answer dated October 18, 2007.

The Examiner Continues to Misinterpret Davey

Davey discloses an introducer sheath 10 that includes "a body portion 12 and a proximal hub portion 14, with a passageway extending through the entire length of the sheath 10." Davey, Specification [0042] and [0045]; Fig. 13. (Emphasis added). Appellant agrees with the Examiner that the hub 14 is part of the sheath 10, as is clearly described in the specification. In addition, as clearly stated in the specification, the hub portion 14 forms the proximal portion of the sheath 10. However, the specification also makes clear that the hub portion 14 comprises a pair of wings 40. Davey, Specification [0042]. The Examiner's marked up drawing of Fig. 13 is not consistent with the specification. Instead, the Examiner's marked up drawing only encloses the tip of the hub portion 14.

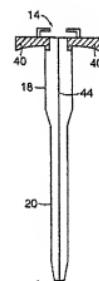


FIG. 13

A correctly marked up drawing of Fig. 13 enclosing the proximal portion of the sheath 10 is provided. As illustrated, the entire hub portion 14, which comprises the proximal portion of the sheath, is enclosed. Clearly, the central portion does not encompass "at least two openings that extend generally traverse to a longitudinal axis of the directing sheath" or "at least two openings that extend through the central portion generally transverse to a longitudinal axis of the directing sheath and intersect the longitudinal lumen."

Thus, Davey does not teach each and every limitation of Claims 11 and 44, and for at least this reason, Applicant submits that Claims 11 and 44 are in condition for allowance.

Furthermore, the Examiner's assertion that there will be two openings after the sheath 10 is split in two is incorrect. Instead, after the sheath 10 is split there will be two separate halves of the sheath 10, each with half a hub portion 14 comprising a single wing 40, none of which defines any transverse opening.

CONCLUSION

For the reasons set forth above and in the earlier filed Applicant's Appeal Brief, Applicant respectfully submits that the claims in the above reference case are in condition for allowance. Favorable action to this end therefore is most respectfully solicited. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Dec 7, 2007

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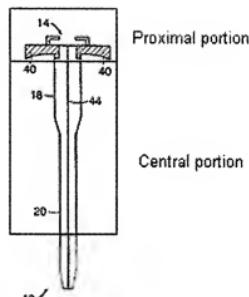


FIG. 13